

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

CITIZENS INSURANCE COMPANY of
AMERICA, a Michigan corporation; and
HANOVER INSURANCE COMPANY,
a New Hampshire corporation

Plaintiffs,

VS.

Civil Action No.: 20-CV-04997

HIGHLAND BAKING COMPANY, INC.,
an Illinois corporation; and TEODORO
ONTIVEROS, individually and on behalf of all
others similarly situated,

Hon. Judge Martha M. Pacold
Mag. Judge Gabriel A. Fuentes

Defendants.

PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiffs Citizens Insurance Company of America (“Citizens”) and Hanover Insurance Company (“Hanover”), by and through counsel of record, move this Honorable Court, pursuant to FRCP Rule 12(c), for judgment on the pleadings. In support of said Motion, Plaintiffs contemporaneously submit their Memorandum of Law in Support.

By this Motion, Plaintiffs seek a declaration that they owe no duty to defend or indemnify Highland Baking Company, Inc. for the underlying Ontiveros Lawsuit because, as a matter of law: (1) the Cyber Liability Coverage Part in the 2017 Citizens Policy does not provide coverage as the Ontiveros Lawsuit is a “claim” that was first made after that Policy expired; (2) the Cyber Liability Coverage Part in the 2018 Policy does not provide coverage for the Ontiveros Lawsuit because the violation of the Illinois Minimum Wage Law (“IMWL”) count in the Complaint does not allege any “Privacy Breach”, “Security Breach”, or “Cyber Breach”, and the Past Events Exclusion clearly and unambiguously precludes coverage for the violation of Illinois Biometric Information Privacy Act (“BIPA”) count; and (3) the General Liability Coverage Part and Umbrella Liability

Coverage Parts in the Policies do not provide coverage for the Ontiveros Lawsuit because the count alleging Highland violated the IMWL does not allege any “bodily injury”, “property damage” or “personal and advertising injury”, and coverage for the BIPA count is plainly excluded from coverage pursuant to the Employment-Related Practices Exclusion, the Recording and Distribution of Material or Information Exclusion, and the Access or Disclosure of Confidential or Personal Information Exclusion. For these reasons, Plaintiffs are entitled to judgment in their favor that they have no duty to defend or indemnify Highland Baking against the Ontiveros Lawsuit.

WHEREFORE, Plaintiffs respectfully pray the Court to grant their motion and declare and adjudge the controversy as follows:

- A. That Citizens has no duty to defend or indemnify Highland Baking in connection with the Ontiveros Lawsuit;
- B. That Hanover has no duty to defend or indemnify Highland Baking in connection with the Ontiveros Lawsuit; and
- C. Grant any other relief that this Honorable Court deems just and equitable under the circumstances, including the award of costs.

Respectfully submitted,

Citizens Insurance Company of America and
Hanover Insurance Company

By: /s/ Kelly M. Ognibene
One of its Attorneys

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CERTIFICATE OF FILING AND SERVICE

I, Kelly M. Ognibene, an attorney, hereby certify that on December 22, 2020, a true and correct copy of *Plaintiffs' Motion for Judgment on the Pleadings* was electronically filed with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to the following:

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